

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PETITION OF MIDWEST GENERATION, LLC,)	AS 07-03
WAUKEGAN GENERATING STATION)	(Adjusted Standard – Air)
FOR AN ADJUSTED STANDARD FROM)	
35 ILL.ADM.CODE 225.230.)	

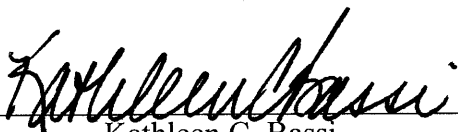
NOTICE OF FILING

To:

John T. Therriault, Assistant Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 Suite 11-500
 100 West Randolph
 Chicago, Illinois 60601

Persons included on the
ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that we have today electronically filed with the Office of the Clerk of the Pollution Control Board **MOTION TO STRIKE ENVIRONMENTAL LAW & POLICY CENTER'S MOTION TO INTERVENE** and **AFFIDAVITS** of **STEPHEN J. BONEBRAKE** and **KATHLEEN C. BASSI**, copies of which are herewith electronically served upon you.



 Kathleen C. Bassi

Dated: January 14, 2008

Kathleen C. Bassi
 Stephen J. Bonebrake
 Sheldon A. Zabel
 SCHIFF HARDIN, LLP
 6600 Sears Tower
 233 South Wacker Drive
 Chicago, Illinois 60606
 312-258-5500

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 14th day of January, 2008, I have served electronically the attached **MOTION TO STRIKE ENVIRONMENTAL LAW & POLICY CENTER'S MOTION TO INTERVENE** and **AFFIDAVITS** of **STEPHEN J. BONEBRAKE** and **KATHLEEN C. BASSI**, upon the following persons:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

and electronically and by first class mail, postage affixed, to the persons listed on the **ATTACHED SERVICE LIST**.



Kathleen C. Bassi

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Stephen J. Bonebrake
Sheldon A. Zabel
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SERVICE LIST

(AS 07-03)

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Courtesy copy to Meleah Geertsma at ELPC

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**MOTION TO STRIKE
ENVIRONMENTAL LAW AND POLICY CENTER'S MOTION TO INTERVENE**

NOW COMES Petitioner, MIDWEST GENERATION, LLC, WAUKEGAN GENERATING STATION, by and through its attorneys, SCHIFF HARDIN LLP, and, pursuant to 35 Ill.Adm.Code § 101.500, moves the Board to strike the Motion to Intervene filed with the Board on December 6, 2007 (*see* the Board's website at <http://www.ipcb.state.il.us/Cool/External/CaseView2.asp?referer=coolsearch&case=13141>), for failure to properly serve counsel of record as required by 35 Ill.Adm.Code §§ 104.100(b), 104.400(b), and 101.304, and 101.402(a). In support of its motion, Petitioner states as follows:

1. On December 20, 2007, Schiff Hardin first became aware that the Environmental Law & Policy Center had filed a Motion to Intervene in this matter through attendance at the regular Board meeting held on that date. A review of the Board's website revealed that this Motion to Intervene had been filed with the Board on December 6, 2007.

2. Section 101.402(a) of the Board's rules specifically provides that "[i]f a person seeks to intervene in an adjudicatory proceeding, the person must file a motion to do so with the Clerk and serve a copy on all parties to the proceeding." (Emphasis added.)

3. Adjusted standards are adjudicatory proceedings under the Board's rules. *See* 35 Ill.Adm.Code § 104.100(a) ("This Part applies to adjudicatory proceedings before the Board that

provide relief from environmental regulations. . . .”) and Part 104, Subpart D (Adjusted Standards). Therefore, the provisions of Section 101.402(a) apply in this case.

4. On December 21, 2007, Stephen J. Bonebrake, one of the counsel of record on behalf of Midwest Generation, investigated whether either of the other two attorneys at Schiff Hardin who are counsel of record in this matter had been served with the Environmental Law & Policy Center’s Motion to Intervene. His investigation indicated that those attorneys had not received the Motion to Intervene. On that day, he placed two telephone calls to Faith E. Bugel, the attorney at Environmental Law & Policy Center who signed the Motion to Intervene, regarding the motion. However, he was unable to reach her and left her voice mail messages regarding the motion, including that it did not appear that any Schiff Hardin attorney had been served with a copy of the motion. Mr. Bonebrake also sent a letter to Ms. Bugel stating that Schiff Hardin had not been served and that according to the Board’s rules, the time for response does not begin until service has been completed. That letter has since been added to the Board’s website for this matter and was acknowledged in the Board’s agenda for its January 10, 2008, meeting.

5. On January 2, 2008, Mr. Bonebrake received a voice mail message from Meleah Geertsma, an attorney at the Environmental Law & Policy Center, indicating that the Environmental Law & Policy Center had “taken care of the service issue.” On that same day, Kathleen C. Bassi, counsel of record at Schiff Hardin on behalf of Midwest Generation, talked with Ms. Geertsma on the telephone to confirm that the Environmental Law & Policy Center had taken action to serve Schiff Hardin with the Motion to Intervene; Ms. Geertsma provided such confirmation.


6. As of the date of this Motion to Strike, Schiff Hardin has not been served with the Motion to Intervene. Ms. Bassi has diligently inquired of the two other counsel of record at Schiff Hardin, to-wit Mr. Bonebrake and Sheldon A. Zabel, to learn whether either of them was served, and they were not. Environmental Law & Policy Center has not complied with its obligation under Section 101.402(a) that it serve the parties with its Motion to Intervene even though it was notified of those obligations and it has had more than adequate opportunity to serve the motion following that notification. Nothing in the Board's rules provides that posting on its website constitutes proper service.

WHEREFORE, for the reasons set forth above and because a reasonable period of time has passed since the Environmental Law & Policy Center was made aware of its failure to serve counsel of record for Midwest Generation, Petitioner Midwest Generation, LLC, Waukegan Generating Station, moves the Board to strike Environmental Law & Policy Center's Motion to Intervene, with prejudice.

Respectfully submitted,

MIDWEST GENERATION, LLC,
WAUKEGAN GENERATING STATION

by:



One of Its Attorneys

Dated: January 14, 2000

Kathleen C. Bassi
Stephen J. Bonebrake
Sheldon A. Zabel
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312-258-5500
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF KATHLEEN C. BASSI

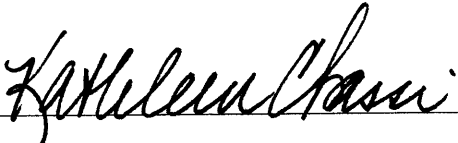
I, KATHLEEN C. BASSI, having first been duly sworn, upon my oath state as follows:

1. I am Of Counsel at Schiff Hardin LLP, where I am one of the counsel of record for Midwest Generation, LLC, in the matter captioned "In the Matter of: Petition of Midwest Generation, LLC, Waukegan Generating Station for an Adjusted Standard from 35 Ill. Adm. Code 225.230," docketed at the Pollution Control Board as AS07-03.

2. I drafted, read, and signed the Motion to Strike to which this Affidavit is appended.


3. The facts regarding my actions and knowledge as set forth in the Motion to Strike are true and correct.

FURTHER AFFIANT SAYETH NOT.

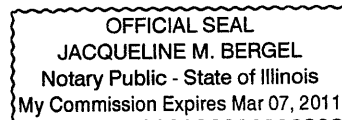


Kathleen C. Bassi

Subscribed and sworn to before me this 14th day of January, 2008.



Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF STEPHEN J. BONEBRAKE


I, STEPHEN J. BONEBRAKE, having first been duly sworn, upon my oath state as follows:

1. I am a partner at Schiff Hardin LLP, where I am one of the counsel of record for Midwest Generation, LLC, in the matter captioned "In the Matter of: Petition of Midwest Generation, LLC, Waukegan Generating Station for an Adjusted Standard from 35 Ill.Adm.Code 225.230," docketed at the Pollution Control Board as AS07-03.

2. I have read the Motion to Strike to which this Affidavit is appended.


3. The facts regarding my actions and knowledge as set forth in the Motion to Strike are true and correct.

FURTHER AFFIANT SAYETH NOT.



Stephen J. Bonebrake

Subscribed and sworn to before me this 14~~th~~ day of January, 2008.



Notary Public

